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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement*/ submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

It has long been the position of many member states of the United Nations that Indigenous Peoples are not subjects of the right of Self Determination despite the affirmation in international law of this right as a right of all Peoples. Indigenous participants in many fora where the issue has been raised, including this Commission, have asked for an explanation of the legal basis of this position from these states, and have found the responses inadequate, to say the least.

But the denial of the recognition of this right as applying to Indigenous Peoples has had consequences. It led in 1982, to the naming of the Sub-Commission's Working Group on Indigenous Populations using the words " Indigenous Populations" and not, as it should have been, the " Working Group on Indigenous Peoples."

Opposition to the term " Indigenous Peoples" and its significance continues even to the present, not only within the United Nations in the Intersessional Working Group on the UN Draft Declaration on the Rights of Indigenous Peoples, but within the Organization of American States' own Draft Declaration.

In 1986, the Conclusion of the Meeting of Experts on the Revision of the Indigenous and Tribal Populations Convention No. 107 of the International Labor Organization cited the position of Indigenous participants on the importance of self-determination as a basic principle for the development of new standards within the ILO. Yet, because of the position of certain states, in the resultant Convention No. 169 on Indigenous and Tribal Peoples, in 1987, the term " peoples" is denied its meaning as regards rights that may attach to that term under international law.

That the ILO chose the term " peoples" itself, in the title and text of the convention, given the early and vehement opposition by some states to the term' s usage under any circumstances, may have been a sign of progress at that time, even with this qualification of its normal meaning in the context of international law. And in its comments to the Commission on the initial consideration of the UN Draft Declaration on the Rights of Indigenous Peoples, the ILO took the position that its Convention 169 did not deny that the right of Self-Determination was applicable to Indigenous Peoples, only that it left it up to the United Nations to extend that recognition. (Comments on the draft United Nations declaration on the rights of indigenous peoples, E/CN.4/1995/199, 6 February, 1995).

In this way, human rights standards continue to evolve. Indigenous Peoples have always known that human rights are not inventions of the United Nations, but that the United Nations has its role in the recognition of those rights in its standard setting. Human rights and fundamental freedoms themselves are inherent and eternal, and despite recognition or the lack of it by the United Nations, Indigenous Peoples know they have the right of Self Determination, and know full well, as the United Nations and its experts have always known, that lack of enjoyment of that right precludes the effective enjoyment of all other human rights and fundamental freedoms. What was lacking was the explicit recognition of this right as applicable to Indigenous Peoples.

The International Indian Treaty Council calls the Commission' s attention to the concluding observations of the Human Rights Committee on the Government of Canada' s fourth periodic

report on its observance of the International Covenant on Civil and Political Rights (ICCPR). (CCPR/C/79/add.105, 7 April 1999).

As the treaty monitoring body of the ICCPR, the Human Rights Committee, as an area of concern, examined the application of the right of self determination to Indigenous Peoples in Canada. Pointedly, the Committee, upon examination of Canada's compliance with the ICCPR with regard to Indigenous Peoples, urged the Canadian government to " report adequately on the implementation of article 1 of the Covenant in its next periodic report."

Noting that the situation of Indigenous Peoples remained the " most pressing human rights issue facing Canadians," the Human Rights Committee emphasized in its Concluding Observations, " ...that the right of self determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth, and that they may not be deprived of their means of subsistence," requirements of Article 1 of the Covenant.

The applicability of the Right of Self Determination to Indigenous Peoples can now no longer be denied. The Human Rights Committee, by the terms of the International Covenant on Civil and Political Rights, is the arbiter of the proper application of the rights recognized in the Covenant by state parties. The Human Rights Committee has openly and unqualifiedly recognized Indigenous Peoples as subjects of Article 1 in Common and the right of Self Determination.

The International Labor Office, in its comments on the UN Draft declaration cited above, voiced concerns that the standards reflected in the Draft declaration not be lower than existing standards, a principle provided for in General Assembly resolution 41/120 of 4 December, 1986.

In the light of the recognition by the Human Rights Committee, it would be incongruous indeed if the United Nations were to adopt a Declaration on the Rights of Indigenous Peoples adopting a lower standard than those recognized in international law. The Human Rights Committee would continue to adjudicate rights of Indigenous Peoples not found in a United Nations Declaration purporting to recognize those same rights.

Without a full recognition of all of the rights recognized by international law as applicable to Indigenous Peoples, the United Nations Declaration on the rights of Indigenous Peoples would have no moral force or legitimacy. Such a declaration would mock not only the long-standing, legitimate aspirations of Indigenous Peoples but the "common aspirations of mankind."